IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 8051 of 2007(H)

PETITIONERS:
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1. **T.M.ASHIA BEEVI,W/O.KOYAKUTTY,AGED 54 YEARS,ASSISTANT REGISTRAR,DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,ALAPPUZHA-1.**

2. **P.RADHAKRISHNAN NAIR,S/O.LATE PARAMESWARAN PILLAI,AGED 52 YEARS,ASSISTANT REGISTRAR,DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE,TRIVANDRUM.**

BY ADV. SRI.V.A.MUHAMMED,
SRI.K.E.HAMZA.

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY TO GOVERNMENT INDUSTRIES DEPARTMENT,SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE KERALA KHADI & VILLAGE INDUSTRIES BOARD, REPRESENTED BY ITS SECRETARY AT TRIVANDRUM.**

3. **SMT.M.LAILA BEEVI,PROJECT OFFICER, DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE, PATHANAMTHITTA.**

4. **SRI.S.DINAKAR,PROJECT OFFICER, DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE, ALAPPUZHA.**

W.P.(C). NO.8051/2007:

***ADDL.R5. K.S. PRADEEP KUMAR,**
VILLAGE INDUSTRIES OFFICER,
DISTRICT KHADI AND VILLAGE INDUSTRIES OFFICE,
KARBALA JUNCTION, KOLLAM,
RESIDING AT KOTTOOR, MULLICKALA,
THEVALAKKARA.P.O., KOLLAM.

***IS IMPLEADED AS ADDL. R5 AS PER ORDER DTD. 11/07/2007 IN I.A. NO. 9100/2007.**

***ADDLITIONAL RESPONDENTS 6 TO 9 IMPLEADED:**

***6. SRI. V.K. MOHANAKUMARAN NAIR,**
PROJECT OFFICER, BOARD OFFICE,
KERALA KHADI & VILLAGE INDUSTRIES BOARD,
TRIVANDRUM.

***7. SMT. M. SREEDEVI,**
PROJECT OFFICER (DEPUTY REGISTRAR),
O/O. THE KERALA KHADI & VILLAGE INDUSTRIES BOARD,
TRIVANDRUM.

***8. SRI. CHERIYAN ANTONY,**
PROJECT OFFICER,
DISTRICT KHADI & VILLAGE OFFICE,
PALAKKAD.

***9. SRI. T.C. MADHAVAN NAMBOODIRI,**
PROJECT OFFICER,
O/O. THE KERALA KHADI & VILLAGE INDUSTRIES BOARD,
TRIVANDRUM.

***ADDL. RESPONDENTS 6 TO 9 ARE IMPLEADED AS PER ORDER DATED 23/07/2007 IN I.A. 9529/2007.**

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY,
SMT.N.SANTHA,
SRI.S.A.ANAND,
SRI. K.P. HARIDAS, SC, KHADI BOARD,
GOVT. PLEADER SRI. P. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.8051/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. KB. 5456/06/E1 (A) OF THE BOARD DTD. 09/10/2006.

EXT.P.2: COPY OF THE ORDER NO. KB. 6046/99/E1 (A) OF -DO- DTD. 31/08/1999.

EXT.P.3: COPY OF THE REQUEST OF THE P.1. DTD. 02/12/2006.

EXT.P.4: COPY OF THE NOTIFICATION NO. KB.6936/97/EI (B) OF THE BOARD DTD. 31/03/2006.

EXT.P.5: COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P.(C). NO.34550/2006-K DTD. 04/01/2007.

EXT.P.6: COPY OF THE ORDER NO. KB.10294/2006/ETA OF THE R.2. DTD. 01/03/2007.

EXT.P.7: COPY OF THE ORDER NO. 955/K1/07/ID OF THE GOVERNMENT DTD. 07/02/2007.

EXT.P.8: COPY OF THE NOTE OF THE P.1. DTD. 06/02/2007.

EXT.P.9: COPY OF THE PETITION OF THE P.2. DTD. 13/12/2006.

EXT.P.10: COPY OF THE NOTE OF THE P.2. DTD. 06/02/2007.

EXT.P.11: COPY OF THE JUDGMENT IN O.P. NO. 2306/2001-Y DTD. 12/06/2002.

EXT.P.11: COPY OF THE ORDER NO. KB.48/07/E1 (A) OF THE KERALA KHADI & VILLAGE INDUSTRIES BOARD DTD. 02/05/2007.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.8051 of 2007-H

Dated this the 23rd day of July, 2007.

J U D G M E N T

The petitioners are Assistant Registrars, working under the second respondent. Their next promotion post is that of Project Officer. As per the provisions of the Kerala Khadi and Village Industries Board (Classification and Conditions of Recruitment of Staff) Regulation, 2006, framed under the Kerala Khadi and Village Industries Board Act, 1957, clearing of Account Test (Higher) is one of the obligatory test for promotion to the post of Project Officer. The petitioners have not cleared that test. Therefore, superseding them, their juniors, respondents 3 and 4 herein, have been promoted to the cadre of Project Officer, by Exts.P6 and P7. So, this writ petition is filed, praying for a mandamus to the second respondent to promote the petitioners as Project Officers, granting exemption from passing the test for a period of 2 years, under Rule 13A(b) of the KS & SSR. Their claim for promotion has been rejected. The petitioners relied on Regulation 36 of the afore-mentioned Regulation which reads as follows:

> 36. Amendment to the provisions contained in the Kerala State and Subordinate Services Rules from time to time will apply mutatis mutandis to the relevant provisions in these regulations except in the case of the following provisions in the Regulations

> namely; 1, 2(d), 2 (m), 3, 4, 5, 7 and 15 (b).

According to the petitioners, all the provisions of the KS & SSR are applicable to the employees except when there is a specific provision in the Regulations which is in variance with those in the KS & SSR. So, Rule 13A(b) is also applicable. So their claim for promotion has been wrongly rejected and their juniors have been promoted, it is submitted.

2. The Khadi and Village Industries Board has filed a counter affidavit in which it is submitted that all those provisions of KS & SSR which should be made applicable to the employees of the employees of the Khadi Board have been incorporated in the Regulations. Regulation 36 provides that any further amendments to those provisions incorporated, will also apply mutatis mutandis. In other words, there is no general adoption of KS & SSR as contended by the petitioners. The party respondents who got themselves impleaded also support this submission.

3. I heard the learned counsel on both sides. Regulation 36 reads as follows:

> 36. Amendment to the provisions contained in the Kerala State and Subordinate Services Rules from time to time will apply mutatis mutandis to the relevant provisions in these regulations except in the case of the following provisions int he Regulations namely; 1, 2 (d), 2 (m), 3, 4, 5, 7 and 15 (b).

4. Going by the above provision, I feel that the interpretation given by the Khadi and Village Industries Board to the above provision appears to be reasonable. It cannot be said that general provisions of KS & SSR are applicable except otherwise provided. Provisions of KS & SSR are incorporated as the provisions of Regulations which will be evident from various provisions concerning declaration of probation, promotion etc. The same is the case of test qualification also. So, the provisions of Rule 13A (b) unless incorporated in the Regulations, cannot be said to be applicable by virtue of Regulation 36.

The learned counsel for the petitioner points out that account test, as it is newly introduced qualification they did not get chance to appear the test. So there is no justification for superseding them. If they get one chance for clearing the test, they will clear the test. The grievance of the petitioners may be genuine. But, as long as the Regulations are in force, no relief could be granted to them by this court. Accordingly, the Writ Petition fails, and it is dismissed. But, this will not affect the rights of the petitioners to challenge the Regulation, if so advised.

K.BALAKRISHNAN NAIR,
JUDGE.

MS